

OLIVIER BRANDICOURT
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 15 Civ. 08725 (GBD)

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UMB Bank, N.A., as Trustee,
Plaintiff

vs.

SANOFI,

Defendant

-----x

VIDEOTAPED DEPOSITION OF OLIVIER BRANDICOURT

Thursday, October 18, 2018 9:03 a.m.

Weil, Gotshal & Manges

2, rue de la Baume, Paris, 75008, France

Reported by:

Janet Sambataro, RMR, CRR, CLR

JOB NO. 147615

1 OLIVIER BRANDICOURT

2 MR. CRICHLLOW: And on the phone -- on
3 the phone, we have David Crichlow of Katten
4 Muchin Rosenman, on behalf of UMB.

5 (Discussion off the record.)

6 THE WITNESS: Yes. As you can see,
7 I've not been used to this kind of practice.

8 OLIVIER BRANDICOURT,
9 having been duly sworn, after presenting
10 identification in the form of a driver's license,
11 deposes and says as follows:

12 DIRECT EXAMINATION

13 BY MR. GILMAN:

14 Q. Sir, state your full name, please.

15 A. Olivier Brandicourt.

16 Q. Where do you presently reside?

17 A. I'm residing in Paris.

18 Q. Any plans to move?

19 A. At this point, no.

20 Q. What is your current occupation?

21 A. I'm the CEO of Sanofi SA.

22 Q. And when did you take on that role?

23 A. It was the 2nd of April, 2015.

24 Q. Do you have any plans to leave?

25 A. Not at this point.

1 OLIVIER BRANDICOURT

2 Genzyme, Sanofi issued contingent value rights,
3 or CVRs?

4 A. Probably when I arrived at Sanofi.

5 Q. Okay. And when was the first time that
6 you personally read the CVR agreement that is the
7 document between the trustee and Sanofi relating
8 to the issuance of those CVRs?

9 A. I'm not sure at the time I read any
10 specific document, except that some of my team
11 explained, I think, what was the essential
12 content of it.

13 Q. Okay. Well, up until today, have you
14 ever read the CVR agreement cover to cover?

15 A. No.

16 Q. Have you a copy of the CVR agreement in
17 your office?

18 A. I don't think so.

19 Q. Have you ever had a copy of the CVR
20 agreement?

21 A. I read part of the copy of the CVR
22 agreement.

23 Q. When was that?

24 A. That was in the last few days.

25 Q. Prior to the last few days, have you

1 OLIVIER BRANDICOURT

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Age Group	Total (%)	Male (%)	Female (%)	Non-binary (%)
18-24	15	10	20	5
25-34	25	15	30	10
35-44	30	20	35	10
45-54	20	15	25	10
55-64	15	10	20	10
65+	15	10	20	10

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

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1 OLIVIER BRANDICOURT

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1 OLIVIER BRANDICOURT

2 Q. Let me see if I understand your answer.

3 A. Pretty clear.

4 Q. If anyone put in plan -- if anyone put
5 in place a plan not to pay the milestone, you
6 would consider that unethical?

7 A. Correct.

8 (Previously marked Exhibit 552
9 incorporated by reference.)

10 Q. Let me hand you what has been
11 previously identified as Plaintiff's Exhibit 552.

12 MR. GILMAN: John, regarding --

13 (Discussion off the record.)

14 MR. GILMAN: The one that we just
15 finished, Plaintiff's Exhibit 618, may we
16 stipulate that that is authentic and the record
17 of a regularly conducted business activity?

18 MR. NEUWIRTH: Yes.

19 MR. GILMAN: Thank you.

20 Q. Mr. Brandicourt, do you have before you
21 Plaintiff's Exhibit 552? It is, at the top, an
22 e-mail from a Marc Esteva to Marie-Claire Farris
23 dated October 7, 2014.

24 Sir, I'm focused on the first page, but if
25 you want to quickly look at the prior e-mails,

1 OLIVIER BRANDICOURT

2 they're all very short. But I'll focus on the
3 first page when you're ready.

4 A. Okay.

5 Q. All right. Focusing on the e-mail at
6 the bottom, on the first page, do you see there
7 that Mr. Esteva is writing, and he says, among
8 other things, "We are now on the edge: As you
9 can see, an average 6% under-performance versus
10 this forecast would leave us below the
11 400 million threshold. We still consider the
12 same potential for Lemtrada over the long term,
13 yet with a slower ramp-up."

14 Do you see that?

15 A. Yes, I do.

16 Q. Did you know that individuals at Sanofi
17 were considering a slower ramp-up of Lemtrada in
18 order not to achieve product sales milestone
19 number one?

20 MR. NEUWIRTH: Objection.

21 A. The answer is no.

22 Q. If individuals in Sanofi were planning
23 a slower ramp-up of Lemtrada in order not to
24 achieve product sales milestone number one, would
25 you agree with me that is unethical?

1 OLIVIER BRANDICOURT

2 A. If, I do agree.

3 (Previously marked Exhibit 264
4 incorporated by reference.)

5 Q. Let me show you what has been marked as
6 Plaintiff's Exhibit 264. It is, at the top, an
7 e-mail from Antoine Schaeffer to Gonzague Bechaux
8 dated May 18, 2015. Sir, I'll represent to you I
9 have no interest in any of the math, in any of
10 the numbers. I'm only focusing on the very first
11 e-mail at the top of the first page.

12 A. Okay.

13 Q. Sir, do you see there that it says,
14 "Please find enclosed the updated CVR
15 \$400 million analysis. Between increase in
16 dollar value impacting ex-U.S. sales and Lemtrada
17 USA adjustment on 15F1 (we adjusted approximately
18 minus 40 million euro downward due to delays in
19 market access and reimbursement) we are now in
20 the 'safe' zone at approximately \$320 million
21 versus the target of \$400 million. Please let me
22 know should you have any questions. Best
23 regards."

24 Do you see that, sir?

25 A. Yes, I do.

1 OLIVIER BRANDICOURT

2 put together, when every single division has
3 expressed their wishes for expense and related
4 sales. So that's what we're dealing with here.
5 All right? It's a first cut, first rollup of
6 those different wishes by the different units.

7 To specifically remember what the challenge
8 was for one product in one unit, the answer is
9 no, because I leave that to the responsibility of
10 the head of those businesses.

11 Q. Okay. At the time that you were CEO,
12 did you undertake to familiarize yourself with
13 any contracts or commitments that Sanofi had that
14 would impact your ability to challenge any of the
15 budget requests?

16 A. I would have expected those heads of
17 businesses to highlight that to me.

18 Q. Okay. So you would have said it was
19 the job of the business head to bring to your
20 attention Sanofi's obligations under the CVR
21 agreement with respect to Lemtrada when they were
22 presenting budgets relating to Lemtrada?

23 A. I would.

24 Q. And is it your testimony that you
25 cannot recall ever giving a moment's thought to

1 OLIVIER BRANDICOURT

2 the CVR agreement in any of your budget
3 challenges?

4 A. That didn't come up.

5 MR. GILMAN: Okay. Why don't we take
6 our second break.

7 THE VIDEOGRAPHER: Going off the
8 record. The time is 11:17.

9 (A recess was taken.)

10 (Document Bates-stamped SAN-CVR
11 020236570 through -6580 marked Exhibit
12 621.)

13 THE VIDEOGRAPHER: Back on the record.
14 The time is 11:35.

15 BY MR. GILMAN:

16 Q. Mr. Brandicourt, I've placed before you
17 Plaintiff's Exhibit 621. It is a document
18 produced from the files of Sanofi, bearing
19 Production Nos. SAN-CVR020236570 through -6580.

20 On the first page, it is a transmittal
21 e-mail from Mr. Underwood to Mr. Sibold dated
22 November 19, 2015, enclosing a package of slides.

23 Sir, by November -- mid-November 2015, you
24 were at the company for over half a year?

25 A. (Witness nods.)

OLIVIER BRANDICOURT

Q. When you came on board to Sanofi, is it to say that you -- among the other things were interested in, one of them was building a franchise?

A. Yes.

Q. That was important to you?

A. Yes. And I was rather vocal on that one.

Q. I understand that. I've read -- I've read a number of your statements. And well said.

In talking about the development of an MS franchise, what do you mean by that?

A. Being looked at by the medical community as a committed actor in MS.

Q. As someone who develops and tries to

